

EXHIBIT 20

In The Matter Of:

*Fair Fight Action v.
Raffensperger*

Michael C. Herron, Ph.D.

February 26, 2020

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REGENCY-BRENTANO, INC.

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1 Q. Let me ask you a couple of
2 questions about things that your report
3 does not opine on.

4 It does not opine on why a local
5 government could change a polling location;
6 is that correct?

7 A. It is correct that my report
8 doesn't take a position on why any
9 government, local or state or otherwise,
10 could take a -- could choose to close a
11 polling place.

12 Q. Okay. And does your report reach
13 a conclusion or offer an opinion on whether
14 the state of Georgia government or whether
15 local governments in Georgia make the
16 decisions to move polling locations?

17 A. My report doesn't engage the
18 matter of what governmental bodies chose to
19 close any particular polling places.

20 Q. Let me ask you to turn to
21 paragraph 16 in your report, which starts
22 on page 10, and I will just ask you to read
23 that real quick.

24 A. To clarify, paragraph 16?

25 Q. Yes. On page 10.

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1 Q. Sure. Would you agree with me
2 that paragraph 16 suggests or states that
3 counties, county governments, engaged in
4 reprecincting between 2014 and 2018?

5 A. I don't see the word "county
6 government" in this paragraph, so I would
7 not agree that this paragraph says anything
8 necessarily about county governments.

9 Q. Okay. So when you say, "Numerous
10 counties in Georgia engaged in
11 reprecincting," what does that mean?

12 Or let me ask this way: Who
13 engages in the reprecincting?

14 A. I don't -- this report doesn't
15 take a position on who engaged in the
16 reprecincting that I describe in this
17 report.

18 Q. Okay. It does not take a
19 position on whether there is any
20 intentional discrimination by the state
21 government of Georgia; is that correct?

22 A. That is correct. The report
23 doesn't engage the matter of intent.

24 Q. Okay. And that would be true for
25 county governments as well; is that

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1 correct?

2 A. I am sorry. I don't understand
3 the question.

4 Q. When you say that the report
5 doesn't engage in the question of intent, I
6 had asked about the state government. I am
7 just making sure that also your report does
8 not take an opinion or offer an opinion on
9 the intent of county governments with
10 regard to reprecincting; is that correct?

11 A. Yes.

12 Q. Okay. And your report does not
13 offer an opinion on whether the State has
14 any knowledge of an alleged disparate
15 impact caused by reprecincting; is that
16 correct?

17 A. I would say that my report
18 doesn't take a position on what state
19 election officials may or may not have
20 known about reprecincting. I don't take a
21 position on this.

22 Q. And you don't take a position on
23 what county governments may or may not have
24 known about reprecincting; is that fair as
25 well?

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1 A. I don't want to -- I think the
2 latter question is difficult for me to
3 answer. I don't want to be in a situation
4 where I am saying that individuals don't
5 know where precincts are located.

6 Q. Fair. And that's not what I am
7 asking, and I will try to do a better job
8 asking the question.

9 Your report does not take an
10 opinion on whether any county governments
11 know or knew of any alleged disparate
12 impact on African-American voters between
13 2014 and 2018 as it relates to
14 reprecincting decisions; is that correct?

15 THE WITNESS: Could you read
16 that?

17 (Record read.)

18 THE WITNESS: My report does not
19 take a position on what any county
20 official may or may not have known.

21 Q. Okay. There's several terms I am
22 going to ask you to just help me define.
23 Your report talks about or uses the phrase
24 "racially neutral." What does that term
25 mean to you as it relates to the

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25 mean to you as it relates to the

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1 60 yards is highly statistically
2 significant. Would you agree with that?

3 A. That is my understanding of their
4 result, yes.

5 Q. Okay. Did you conduct an
6 analysis of how far polling locations may
7 have moved in Georgia?

8 A. It is not part of my report. I
9 looked briefly at some data, but not
10 thoroughly.

11 Q. Okay. Would you agree that the
12 effect of a polling location moving
13 60 yards is statistically significant?

14 MR. CREELAN: Objection as to
15 form.

16 Q. I will withdraw. I think that's
17 more about their study. Not a good
18 question.

19 Let me ask you to turn to
20 page 126 of the report, the McNulty-Brady
21 report. The first paragraph on the
22 right-handed column beginning with "these
23 results" and ending in "place voting."
24 Could you just read that briefly?

25 A. Excuse me. Could you just

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1 Q. Okay. Your report doesn't
2 examine -- let me strike that. Start over.

3 Your report doesn't reach a
4 similar conclusion that reprecincting in
5 Georgia was done with electoral, if not
6 also partisan, gains in mind; is that
7 correct?

8 MR. CREELAN: Objection as to
9 form.

10 THE WITNESS: My report doesn't
11 take a position on the intent of any of
12 the polling place location changes that
13 it documents.

14 Q. Okay. And Amos, Smith and St.
15 Claire look at changes from the 2012
16 election to the 2014 election; would you
17 agree with that?

18 A. I believe that is correct. Yes.

19 Q. 2012 is a presidential election
20 year, and 2014 is not; isn't that right?

21 A. That is correct.

22 Q. Okay. Do you have any concerns
23 with the fact that they compared a
24 presidential election year to a
25 non-presidential election year? And by

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1 reduces, not closes. Sorry. Reduces the
2 number of polling locations?

3 MR. CREELAN: Objection as to
4 form.

5 THE WITNESS: Would you repeat
6 the question, please?

7 (Record read.)

8 THE WITNESS: My analysis looks
9 at whether individuals -- let me say it
10 again. There are a couple of different
11 pieces of my report.

12 Q. Uh-huh.

13 A. So I'm using the term "analysis"
14 very broadly. It looks at whether
15 individuals, registered voters in Georgia,
16 had different polling places.

17 Q. Right. And they could have a
18 different polling place because the county
19 increased the number of polling locations;
20 isn't that right?

21 A. That is possible.

22 Q. Okay. And are any of the
23 analyses that you conducted, do they
24 distinguish between a new polling location
25 because the county has increased the number

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1 of polling locations and a new polling
2 location because the county has decreased
3 the number of polling locations?

4 A. My analyses, again, speaking
5 broadly, look at whether individuals had
6 new polling places. I don't engage the
7 question of the rationale. You mentioned
8 "because" in your sentence, in your
9 question to me; and I interpret "because"
10 as an explanation for why the polling
11 places may or -- may have changed. I don't
12 engage that question. I report in my
13 affidavit that racial groups in like the
14 counts of people who receive new polling
15 places, but I don't offer any opinion as to
16 why they did.

17 Q. And why they did in this case as
18 opposed to what I was asking earlier about
19 intent. I am only asking here about why
20 they did it, because there is a new -- an
21 increased number of polling locations or
22 decreased. For the purposes of your
23 report, any time somebody has to vote in a
24 new polling location, that is considered,
25 period, correct?